



2-16-2012

# Senate Bills 284-285 A "Bribery Exception" to Maryland's Legislative Privilege

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## Recommended Citation

Lynn McLain, *Senate Bills 284-285 A "Bribery Exception" to Maryland's Legislative Privilege*, (2012).

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# Senate Bills 284 & 285

A “Bribery Exception” to Maryland’s Legislative Privilege

Testimony presented by:

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# 2011: High Profile Corruption Charges Have Generated Public Concern

## STATE COURTS:

Baltimore City Mayor Sheila Dixon (for her actions when she was President of the Baltimore City Council)

Baltimore City Councilwoman Helen L. Holton

Grand jury indictment of Del. Tiffany Alston

## FEDERAL COURTS:

Prince George's County Executive Jack Johnson and his wife (guilty pleas)

State Senator Ulysses S. Currie (acquitted)

Anne Arundel County Councilman Daryl Jones, convicted of failure to file federal personal income tax returns and business payroll tax returns, refused to resign while he served his prison term

S.B. 284 & 285 respond to the fact that the bribery indictments of Sheila Dixon and Helen Holton were dismissed on grounds of the “legislative privilege” in MD Const., art. III, § 18.

# 1776: Maryland Constitution

## Article III, Section 18

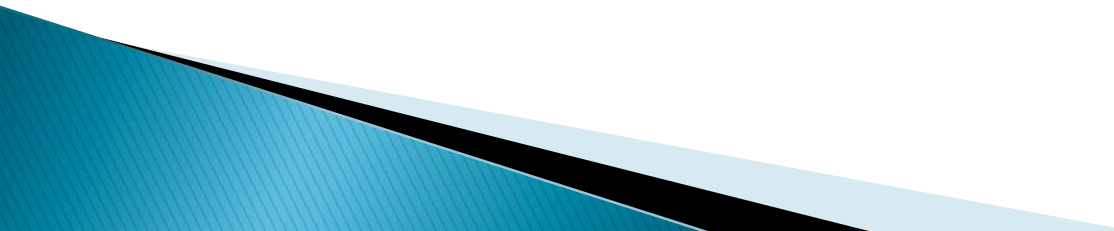
*“No Senator or Delegate shall be liable, in any civil action, or criminal prosecution, whatever, for words spoken in debate.”*

S.B. 284 amends the legislative privilege resulting from this provision so as to create an explicit exception for bribery, as defined in MD Const. art. III, § 50, which was added in 1867.



The 1776 Constitutional legislative privilege was derived from the English Parliament's 1689 similar provision, which Parliament had demanded of the newly crowned King William.

Members of Parliament sought and obtained this protection to promote free and open debate, by precluding their prosecution by the Crown for seditious libel or criminal libel, as well as precluding their being sued civilly for defamation for words spoken in debate.



The MD Constitution was amended as a result of Constitutional Conventions in 1851, 1864, and 1867.

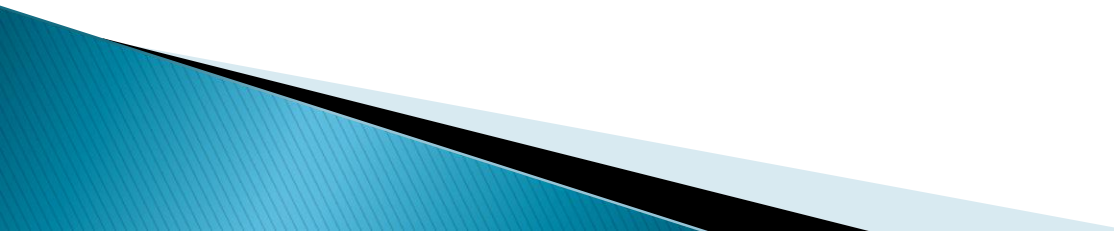
## Debate at 1867 MD Constitutional Convention

Delegate Brown stated that:

“[h]e could not prove before a jury that *bribery and corruption* had of late prevailed in our legislative bodies, but the charge had been made not only by the people, but by the press, and with such proofs that he believed it.”

He argued that:

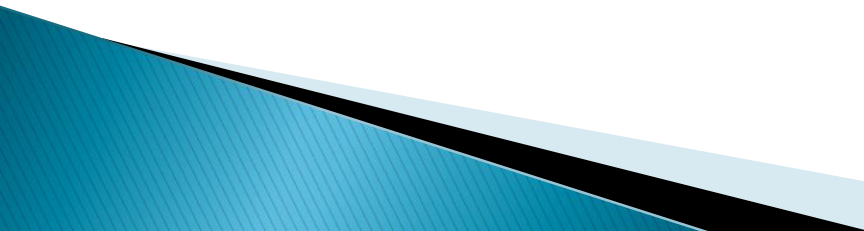
“The question is simply *shall the ancient honor of the State of Maryland be kept untarnished, or not?* Shall the integrity of our republican institutions be kept pure, or not?”



## 1867 MD Constitutional Convention adopted Article III, Section 50

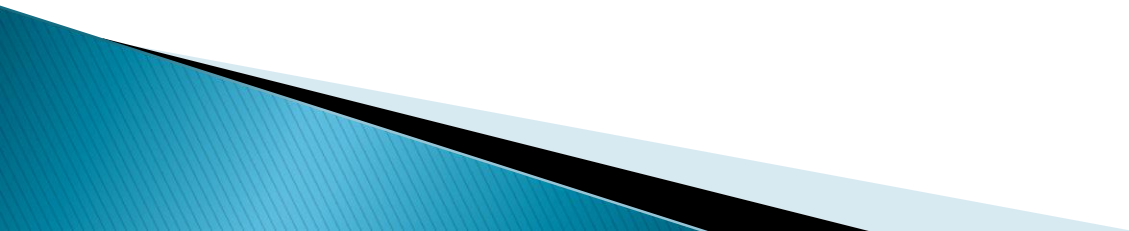
*It shall be the duty of the General Assembly, at its first session, held after the adoption of this Constitution to provide by Law for the punishment, by fine, or imprisonment in the Penitentiary, or both..., of any person, who shall bribe, or attempt to bribe, any Executive, or Judicial officer of the State of Maryland, or any member, or officer of the General Assembly of the State of Maryland, or of any Municipal corporation in the State of Maryland, ... in order to influence him in the performance of any of his official duties; and also, to provide by Law for the punishment, by fine, or imprisonment in the Penitentiary, or both,... of any of said [Executive or Judicial] officers, or members [or officers of the General Assembly, or of a municipal corporation ], who shall demand, or receive any bribe, fee, reward, or testimonial, for the performance of his official duties, or for neglecting, or failing to perform the same....*

[The next session the General Assembly passed the statute now codified as Crim. L. § 9-201 .]





The intent behind Article III, § 50 seems to have been to create a “bribery exception” to the legislative privilege.



# Reasons for Privilege and Immunity Are Not to Protect Bribery

J. Wilner:

This 'legislative privilege' exists – for both State and City or County legislators – to provide “immunity when acting in the sphere of LEGITIMATE LEGISLATIVE ACTIVITY.”

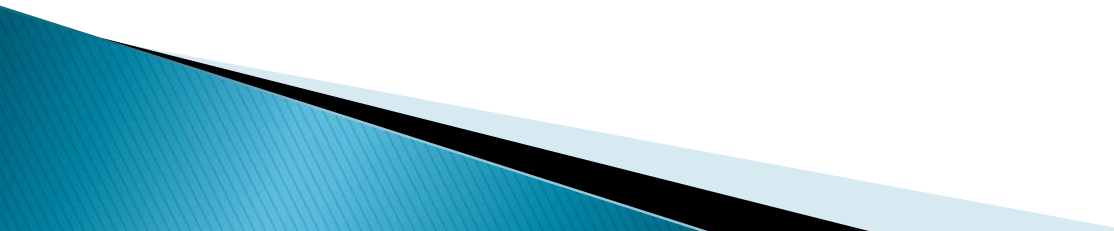
“Illegal acts such as BRIBERY are obviously NOT in aid of legislative activity and legislators can claim no immunity for illegal acts.”

Montgomery County v. Schooley, 97 Md. App. 107 (1993) (quoting Bruce v. Ridley, 631 F.2d 272 (4<sup>th</sup> Cir. 1980) with approval ). Accord U.S. v. Brewster, 408 U.S. 501 (1972).



At its next session after the 1867 Constitutional Convention, the General Assembly passed the statute now codified as § 9–201 of the Criminal Law article (formerly Art. 27, §22), making legislators and other public officials criminally liable for bribery.

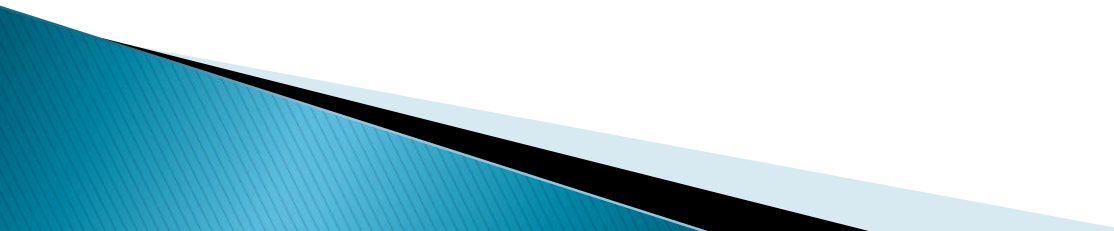
§ 9–201 (which is reproduced in full in SB 285) *tracks the language of Md. Const., art. III, §50.*



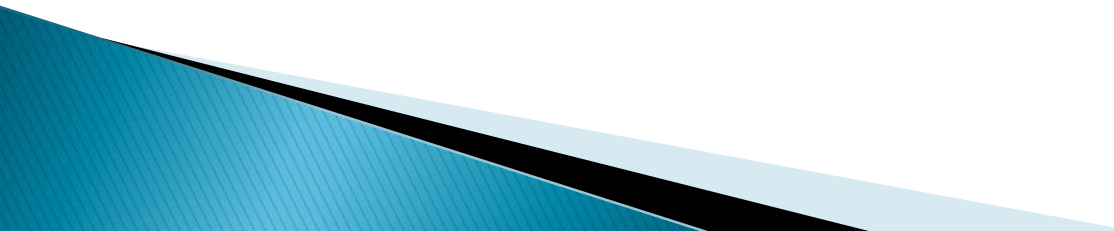
# 1973: Cts. & Jud. Proc. § 5-501 extended the legislative privilege to local legislators

“A civil or criminal action may not be brought against a city or town councilman, county commissioner, county councilman, or similar official by whatever name known, for words spoken at a meeting of the council or board of commissioners or at a meeting of a committee or subcommittee thereof.”

S.B. 285 amends this statute, so as to create an explicit exception for prosecutions under Crim. L. §9-201.



1997: Md. Code Ann., Cts & Jud. Proc. § 5-526 was added, to further protect legitimate acts by legislators:

- “(a) A member of a state legislature, including a member of the General Assembly of Maryland, who makes a communication on behalf of a constituent is not civilly liable for defamation *unless the communication is false and made with knowledge of or in reckless disregard of its falsity.*
  - (b) This section does not supersede or constitute a waiver of a member’s constitutional, statutory, or common law privileges or immunities.”
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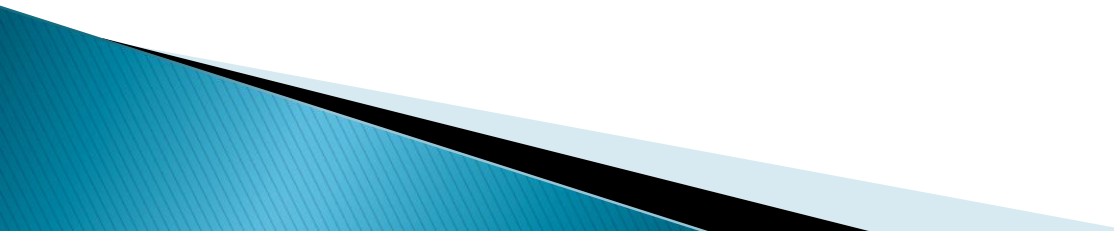
Most of the reported cases under Crim. L. §9-201 have involved bribes or kickbacks to executive agency officers for the awarding of contracts.

# 2011: The only MD Court of Appeals case on legislative privilege

Background:

Baltimore City Councilwoman Helen B. Holton was Chair of the Economic Development and Public Financing Subcommittee until January 2007, and Chair of the Taxation and Finance Committee as of January 2007.

She was indicted for allegedly having accepted a developer's \$12,500 payment for a political survey on her behalf, in exchange for her deciding vote in granting a tax break to Ron Lipscomb's Inner Harbor East development project.



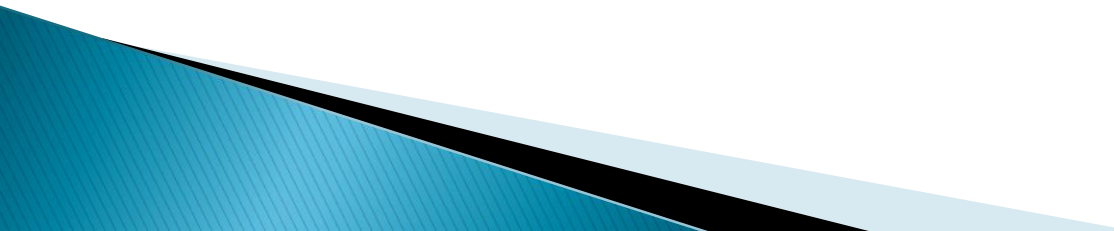
# State v. Holton, 420 Md. 530 (2011)

The State Prosecutor argued that the legislative privilege did not apply to local legislators charged with state crimes.

The court held that it did apply.

The court construed the Maryland statutory legislative privilege for local legislators (Cts. & Jud. Proc. § 5-501) as having the same scope as the legislative privilege for General Assembly members, found in MD Const., art. III, § 18.

The court construed the MD law the same way the US Supreme Court has construed the federal constitutional legislative privilege protecting members of Congress: the legislator may be prosecuted for bribery, but no evidence of her legislative acts may be admitted.





# *State v. Holton*, 420 Md. 530 (2011)

Five members of the Court of Appeals held that the indictment must be dismissed due to legislative privilege, because the indictment relied upon *evidence* of Ms. Holton's *legislative acts*.

The bribery case never went to trial.

Without the evidence of Councilwoman Holton's legislative acts, all that could be proved was acceptance of a contribution in excess of the \$4000 limit (to which she ultimately pled nolo contendere).

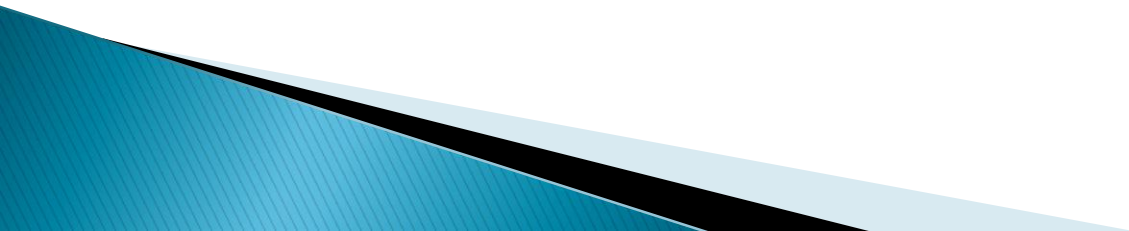
She was reelected to the City Council.



The *Holton* decision to bar evidence of legislative acts in state prosecutions for bribery thwarts the intent underlying MD Const., art. III, § 50 and Crim. L. § 9-201.

The federal constitution has no corollary to MD Const., art. III, sec. 50.

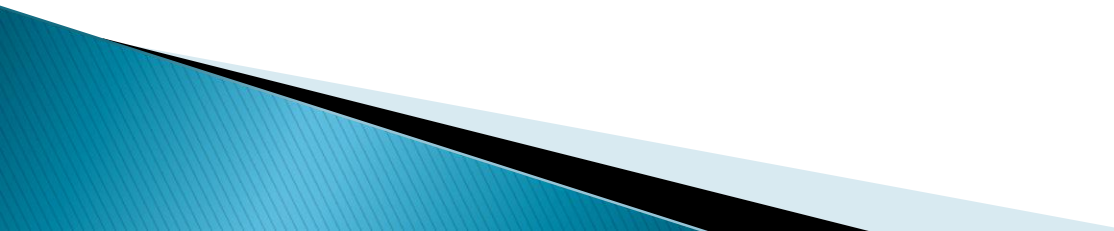
The Court of Appeals neither cited nor discussed MD Const., art. III, sec. 50.



Because it relied on evidence of Mayor Dixon's legislative acts when she was on the City Council, Sheila Dixon's bribery indictment was also dismissed. She went to trial on other charges and was convicted of misdemeanor embezzlement for her personal use of the Holly Trolley gift cards.

She subsequently entered an Alford plea to perjury regarding her failure to disclose gifts from developer Ron Lipscomb and received a PBJ for her sentence as to both crimes.


Under the terms of her plea bargain, she receives an \$83,000 a year pension from Baltimore City taxpayers, and she will be able to run again for public office after her 4 years' probation is over.



SB 284 & 285 amend MD Const. art. III, § 18 and Cts. & Jud. Proc. § 5-501 to make the “bribery exception” to the legislative privilege explicit in STATE prosecutions of state or local legislators for bribery, just as such evidence is already admissible in trials of state or local legislators for similar federal crimes.\*

These bills are intended to make it clear that evidence of legislative acts is admissible in bribery prosecutions in state courts, as well.

\* When state or local legislators are on trial for federal crimes, the federal criminal law supersedes state law, and no state privilege or immunity is recognized.



Editorials urging the General Assembly to take decisive action against unethical practices seem to reflect widespread public sentiment.

Passing SB 284 & 285 will show our citizens that the General Assembly does not tolerate bribery.

SB 284 will put the explicit Constitutional “bribery exception” on the ballot in the next general election, so that the voters will see it.

